

ORIGINAL

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
Implementation of the Pay Telephone)
Reclassification and Compensation Provisions)
of the Telecommunications Act of 1996)

CC Docket No. 96-128 Federal Communications Commission
Office of Secretary

**Motion for Further Limited Extension of Time
And
Response to American Public Communications Council**

Choice One Communications Inc. ("Choice One"), by its counsel, and pursuant to Sections 1.3 and 1.46 of the Commission's rules, hereby submits this Motion for Further Limited Extension of Time (the "Motion") to file the system audit report and accompanying statements required by Section 64.1320(b) of the Commission's rules, 47 C.F.R. § 64.1320(b) (collectively the "System Audit Report").¹ In addition, on December 6, 2004 the American Public Communications Council ("APCC") filed a pleading opposing ten pending requests for temporary waivers of System Audit Report, including one by Choice One.² APCC's pleading

¹ Choice One filed its initial "Petition for Waiver or, in the Alternative Motion for an Extension of Time" in this docket on July 1, 2004 ("Initial Petition"). The Initial Petition has not yet been docketed or acted upon by the Commission.

² Opposition of the American Public Communications Council to Requests for Additional Time to File System Audit Report, CC Docket No. 96-128 (December 6, 2004) ("APCC Opposition").

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was hopelessly out of time, and therefore no response is required,³ however to the extent necessary, this motion should be treated as a response thereto.

In this Motion, Choice One requests an extension of time until February 4, 2005 to complete and file its System Audit Report and accompanying statements. Choice One has contacted Commission staff orally regarding this Petition, as required by Section 1.46(c) of the Commission's rules, 47 C.F.R. § 1.46(c).

As explained below, there is good cause for granting this Petition, and the Petition is in the public interest.

I. Background on Choice One

Headquartered in Rochester, New York, Choice One is an integrated communications provider offering facilities-based voice and data telecommunications services. Choice One is a leading integrated communications provider offering voice and data services including Internet solutions, to businesses in 29 markets across 12 Northeast and Midwest states. Choice One reported \$320 million of revenue in 2003, has more than 100,000 clients and employs approximately 1,200 colleagues.

II. Good Cause Exists For a Grant of the Motion Since Choice One is Tracking-and-Paying Payphone Compensation, and Thus No Harm Will Result to Any Entity

Section 1.3 allows the Commission to waive its rules where "good cause" exists. The Commission has concluded that good cause exists where "special circumstances warrant a

³ Under Section 1.45(b) of the Commission's rules, 47 C.F.R. Sect. 1.45(b), an opposition to any motion, petition or request may be filed within ten (10) days of the original pleading. Choice One's Initial Petition was filed on July 1, 2004 and the APCC Opposition was filed five months later on December 6, 2004.

deviation from the general rule, such deviation serves the public interest, and waiver would be consistent with the principles underlying the rule.”⁴ Such good cause exists here.

The payphone compensation order that instituted the System Audit Report requirement made clear that the fundamental reason for imposing such a requirement was to ensure that carriers are tracking and paying payphone compensation where appropriate.⁵ For years now carriers have had an obligation to track compensable payphone calls and to pay such compensation to payphone owners. As required by law Choice One tracks compensable payphone calls and compensates payphone owners for those calls as required by law. Therefore grant of the motion will not harm any party.

Given that the fundamental underlying objective behind the System Audit Report is being fulfilled by Choice One, no entity would be harmed through grant of this Petition and therefore the petition is in the public interest.

III. The Payphone System Audit Is Expected to Be Completed Shortly.

After an extensive period of reviewing available auditors capable of performing a reliable payphone system audit, and after extensive discussions with representatives of Deloitte & Touche, LLP, Choice One hired Deloitte & Touche to conduct its payphone systems audit. Unfortunately, Deloitte was unable to proceed as expeditiously as Choice One had hoped.

⁴ *Northeast Cellular Tel. Co., L.P. v. FCC*, 897 F2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F2d 1153, 1159 (D.C. Cir. 1969)).

⁵ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, 18 FCC Rcd 19975 (rel. Oct. 3, 2003).

Deloitte is now fully engaged in performing the system audit, and Choice One has been informed that Deloitte expects to finalize its audit on or about January 31, 2005.

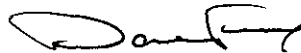
IV. Grant of the Motion is in the Public Interest

As noted above, Choice One is paying, and will continue during the period any extension is in effect, to pay per-call payphone compensation to payphone owners as required by law. In light of this, as well as the fact that the payphone system audit is underway, the public interest is best served by allowing Choice One and its auditors adequate time to complete their tasks and present the most comprehensive and reliable information possible to the Commission.

Conclusion

For the foregoing reasons, Choice One respectfully requests that the Commission grant the relief requested herein.

Respectfully submitted,



Dana Frix
Kemal Hawa
Chadbourne & Parke LLP

Counsel for Choice One Communications Inc.

Dated: December 21, 2004

CERTIFICATION

Elizabeth J. McDonald


I, _____, hereby certify that I am authorized to make this Certification on behalf of Choice One Communications Inc., that I have read the foregoing "Motion for Further Limited Extension of Time And Response to American Public Communications Council," and that the information contained therein is true and correct to the best of my knowledge, information, and belief.

Elizabeth J. McDonald
Title: *Elizabeth J. McDonald*
Choice One Communications Inc.

December 21, 2004

CERTIFICATE OF SERVICE

I, Angel R. Robinson, hereby certify that true and correct copies of the foregoing Motion for Further Limited Extension of Time and Response to American Public Communications Council were sent by U.S. Postal Service to the following individuals on this 21st day of December, 2004.


Angel R. Robinson

Copies to:

Albert H. Kramer
Robert F. Aldrich
2101 L Street, N.W.
Washington, D.C. 20037-01526

Ann Jouett Kinney
201 East Fourth Street
Room 102-890
Cincinnati, Ohio 45202

Eric J. Branfman
Kathleen Greenan Ramsey
Danielle C. Burt
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

John F. Jennings
Big River Telephone, LLC
24 South Minnesota
Cape Girardeau, MO 63701

Daniel Hamm
Controller
Total Call International
707 Wilshire Boulevard
9th Floor
Los Angeles, CA 90017

Kirk Smith, President
5302 Avenue Q
Lubbock, TX 79412

Kathleen Greenan Ramsey
Kathy L. Cooper
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

Chérie R. Kiser
Angela F. Collins
Mintz, Levin, Cohn, Ferris, Glovsky,
And Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Suite 9900
Washington, D.C. 20004